IN THE

Supreme Court of the United States.

No. 280.

I. R. HARKRADER, Sheriff and Keeper of Wythe County Jail, Virginia, Appellant,

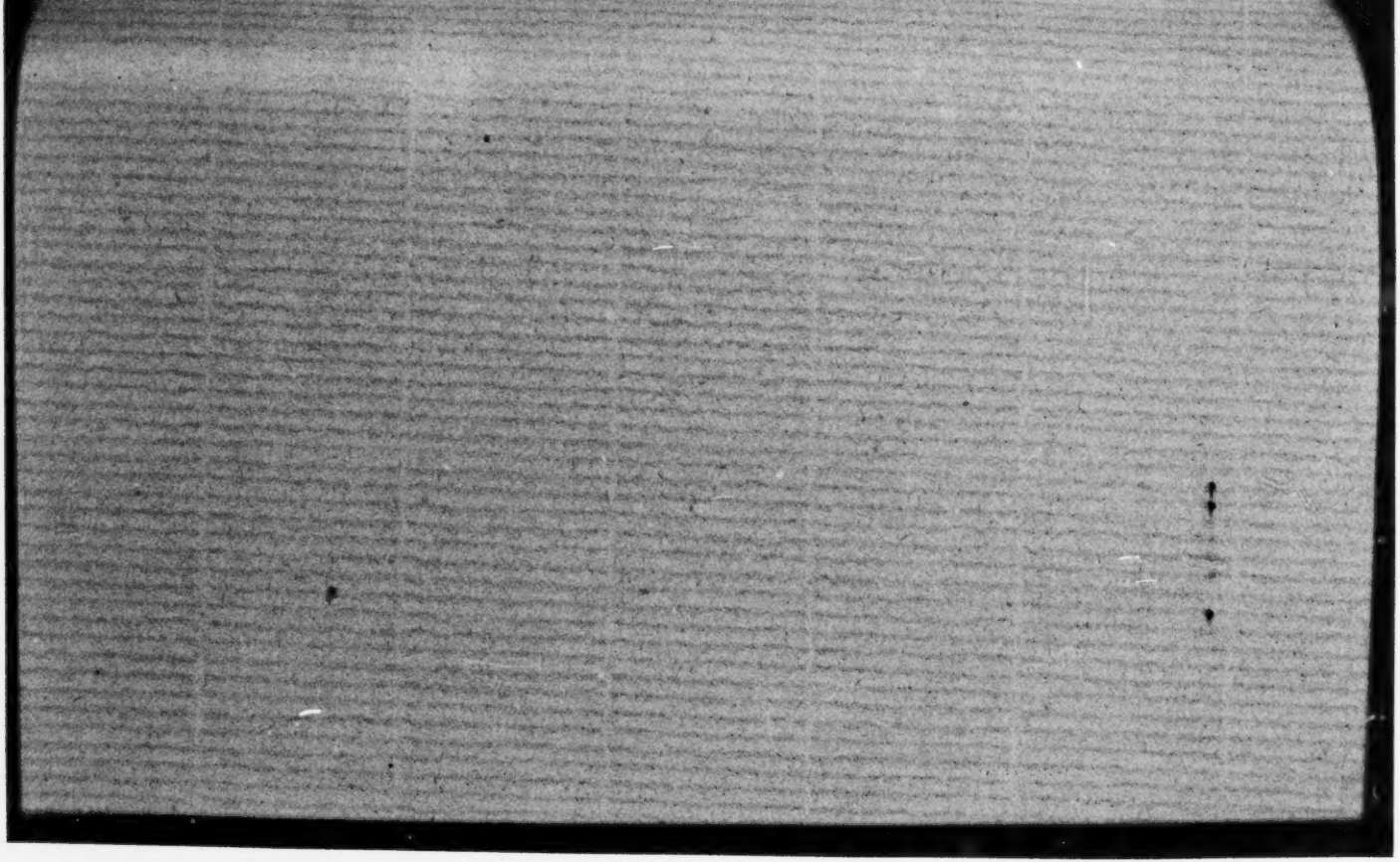
vs.

H. G. WADLEY, Appellee.

Brief for Appellant,

BY

A. J. MONTAGUE,
Attorney-General of Virginia
and *ex officio* Counsel for Appellant.



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BRIEF FOR APPELLANT.

Case Stated.

Appellee was indicted May 16, 1894, of a felony in the County Court of Wythe county, Virginia. The offense was the embezzlement of assets valued at over one hundred and ninety-six thousand dollars, of the Wytheville Insurance and Banking Company, a home corporation, having its chief office at Wytheville, in said county, and of which the appellee was president. The crime charged was wholly committed against the laws of Virginia and within the exclusive jurisdiction of her courts.

In equity proceedings, instituted in the United States Cir-

cuit Court for the Western District of Virginia, by the creditors of said corporation to procure the liquidation of its indebtedness, certain injunctions were awarded the appellee, upon his petition therein, prohibiting the Commonwealth's Attorney for said Wythe county and others from further prosecuting said indictment and exacting bail of the appellee. But neither the County Court of Wythe nor the judge thereof having been specifically included in the terms of the injunctive orders, bail was subsequently exacted by the said court "of its own motion."

Thereafter the appellee, in default of bail in the sum of ten thousand dollars, was committed, and to secure his release he petitioned the said United States Circuit Court for the writ of *habeas corpus*. Upon consideration thereof that Court, *in term*, discharged him from the custody and control of the State Court, and from this judgment this appeal was perfected by the Commonwealth of Virginia through her former Attorney-General.

Argument.

The record exhibits the following facts:

(1) That the appellee was indicted in a State court for a State offense; (2) that the State statute defining and creating the offense charged was in no wise repugnant to the Constitution of the United States; (3) that the indictment legally and sufficiently sets forth the crime charged; (4) that the said offense could only have been indicted in the County Court of Wythe, as this Court had exclusive jurisdiction thereof; (5) that the crime charged could not be tried in any court of the United States; (6) that the accused was held in custody of the State court in pursuance of due process of law; and (7) that the United States Circuit Court intervened, first, to prohibit by injunction, the prosecution of said offense, and subsequently, by *habeas corpus* to release the accused from the commitment incident to his failure to give most reasonable bail.

I.

It is submitted that this exercise of judicial power by the United States Court in thus releasing the accused, is wholly without authority and *coram non judice*; and the only question of the slightest difficulty, is whether the record is so technically arranged as to afford this court jurisdiction for appellate review.

It may be contended that the appeal does not lie to this court for the reason that no formal certificate of the question of jurisdiction is made by the trial court, as required by section 5, of Act of March 3, 1891. This contention cannot be soundly maintained unless this court is asked to put vital stress upon the mere mechanical form of the certificate itself.

The most cursory reading of the record shows but one question, and that is the *jurisdictional power* of this Federal court, as derived from the Constitution of the United States, to thus interfere with the State in the prosecution of crimes against her laws and in her own courts. This jurisdictional question affimatively appears upon almost every page of the record.

The petition for the writ of *habeas corpus* avers as the first and chief ground of the unlawful imprisonment of the appellee that the United States Circuit Court had "prior jurisdiction * * * both of the person of your petitioner and also of the subject matter of the controversy and of the issues involved in said indictment, and that said prior jurisdiction of the said United States Court renders such detention and imprisonment of prisoner by said County Court illegal." *R.*, 3, 4.

The return of the sheriff to the writ avers the jurisdiction and lawful proceedings of the County Court as his warrant for the custody and detention of the prisoner (*R.*, 6). And the answer and denial of the appellee to said return substantially asserts the jurisdiction of the United States Court. *R.*, 10.

The petition for appeal is grounded solely upon the the question of jurisdiction. It is true that numerically there are several assignments of error in said petition, yet these several

assignments of error all present this one question of jurisdiction, and the absence of any constitutional warrant for such jurisdiction.

These assignments reveal nothing but varying statements of the one question at issue—jurisdiction. Moreover, these assignments are made a part of the petition for appeal, and upon this petition the trial judge granted the appeal, and the record certified is pertinent to this question of jurisdiction and only covers this question.

It is submitted, therefore, that the jurisdictional question is so certified in this record as to comply with the rulings in

Shields v. *Coleman*, 157 U. S., 168;
Interior Con. & Imp. Co. v. *Gibney*, 160 U. S., 217;
Re Lehigh M. & M. Co., 156 U. S., 327;
Smith v. *McKay*, 151 U. S., 355.

II.

Assuming, now, that this cause is appealed to the proper tribunal, I will pass to the consideration of the jurisdiction of the trial court.

1. Had the accused been indicted in the Federal, instead of the State court, for an offense against the United States, and had he been committed upon failure to give reasonable bail, would *habeas corpus* lie to procure his release? Certainly not, for said imprisonment is in no sense unlawful.

The jurisdiction of this court to review judgments of inferior United States Courts in criminal cases by writ of *habeas corpus* is limited to the single question of the power of the lower court to commit the prisoner for the act of which he is charged.

Ex parte Carll, 106 U. S., 521;
Ex parte Siebold, 100 Ib., 371;
Ex parte Belt, 151 Ib., 94.

> "The only question that can properly be raised upon this writ, is whether the [United States] Circuit Court exceeded its jurisdiction in holding the petitioner for a contempt and imposing upon him a fine therefor. * * * It is only upon the theory that the proceedings and judgment of the court were nullities that we are authorized to reverse its action. It has been too frequently decided to be now an open question that the writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or of an appeal."

Ex parte Lennon, 166 U. S., 548, 553.

2. If such be the rulings on a review of the action of a Federal Court, *a fortiori* must they apply when the action of a State Court is sought to be reviewed by the Federal Court upon *habeas corpus* proceedings.

> "Where the State Court had jurisdiction of the offense and of the accused, and proceeded under a statute not repugnant to the United States Constitution, a United States Circuit Court has no authority to interfere with the execution of the sentence by writ of *habeas corpus*."

Bargemann v. *Backer*, 157 U. S., 655;
McElvaine v. *Brush*, 142 Ib., 155.

The United States Courts have no authority to issue *habeas corpus* to take one properly in custody under State authority from such custody. Nor has State Court authority to remove a defendant from custody of authorities of the United States.

U. S. v. *Rector*, 5 McLean, 174;
Ableman v. *Booth*, 21 How., 506;
Ex parte Dorr, 3 Ib., 103;
Wood v. *Brush*, 140 U. S., 278.

> Nor can the regularity of the proceedings of the State Court nor the validity of its sentence be called in question by a United States Court by *habeas corpus* or any other process.
>
> *Ableman* v. *Booth*, supra.

It would seem, in view of the repeated decisions of this court, that the doctrine established by these citations is no longer an open question; and that as an inexorable consequence the issuance of this writ by the United States Circuit Court to release this appellee from the prosecution of a State crime, committed by a person and at a place confessedly subject to her jurisdiction, is the exercise of power plainly and palpably beyond the jurisdiction of that court. The offense charged is against the authority and laws of Virginia. She alone has the right to inquire into its commission and punish the offender. The statute of Virginia creating and defining embezzlement is, therefore, in no possible sense repugnant to the United States Constitution, and this prosecution is as much beyond the jurisdiction of the United States Court "as if the offense had been committed on another continent."

III.

1. But this remarkable procedure seemed to be the culmination of a prior judicial act equally anomalous. The consideration of this court is, therefore, invited to this initial step.

Hutchinson's administrator, a citizen of Iowa, instituted on October 5, 1893, a suit in the said United States Circuit Court, against the said Wytheville Insurance and Banking Company. The bill alleged insolvency, and prayed for the appointment of a receiver and the general liquidation of the indebtedness of the defendant. Thus far the appellee had not been indicted. He was, however, indicted of the felony in question on May 16, 1894. On the next day the accused was bailed in the sum of ten thousand dollars. On June 8, 1894, the appellee obtained from United States Circuit Judge Goff

an injunction restraining the Commonwealth's Attorney and others from further prosecution. This injunctive inhibition was, on January 31, 1895, and August 6, 1896, respectively, so enlarged as to bar any further steps in the prosecution save that of exacting bail, which the County Court, "of its own motion," required, in the exercise of the only remnant of power left to the Commonwealth.

This bail seems to have been given from time to time until August, 1896, when the appellee declined further to tender bail, and, upon his commitment, set on foot the *habeas corpus* proceedings in question.

In the petition for *habeas corpus* the petitioner signed two causes of illegal detention: (1) That the injunctive decrees of January and August declared and adjudicated "the prior jurisdiction of the United States Court, both of the person of your petitioner and also the subject-matter of the controversy and of the issues involved in said indictment"; and (2) that the said indictment had been improperly found by reason of the admission before the grand jury of illegal evidence.

(*a.*) It is needless to elaborate the second cause, for it is too well settled now to admit of doubt that *habeas corpus* will not lie to correct such an error connected with the finding of the bill by the grand jury.

Ex parte Harding, 120 U. S., 782;
Ex parte Wilson, 140 U. S., 575.

(*b.*) It is, however, really the former ground which is the basis of the court's action in awarding this writ, and consideration of this is now asked.

It should be observed that though this indictment was found in the State Court a month prior to the issuance of the first injunction, yet the United States Court decrees that it first had jurisdiction of the "person" of the accused, and of the "issues involved in the indictment."

The prior jurisdiction of the "person" was claimed as a corollary of the jurisdiction to entertain the creditors' suit to

wind up the affairs of the insolvent insurance and banking company, of which the appellee was president, but to which suit, at the time of the indictment, he was not a party. In other words, the United States Court held that when it acquired jurisdiction to liquidate the indebtedness of an insolvent State corporation, no officer thereof could be prosecuted in a State Court, without the permission of the Federal Court, for embezzling the assets of the corporation, until the civil suit in the United States Court is completed and dismissed from its docket. And it is likewise claimed that jurisdiction of the "issues involved in the indictment" rested upon similar deductions.

This action of the court seemed to be based upon the general proposition that the court first obtaining jurisdiction of the subject matter and the parties, has exclusive control of both until a final disposition has been made of the "questions submitted."

This general proposition, however, finds no application here, for the United States Court did not first obtain jurisdiction even of the parties, in that the appellee was indicted in the County Court on May 16, 1894, and was not made a party to the civil suit in the United States Court until May 26, 1894. Besides, neither the Commonwealth of Virginia nor Wadley, the appellee, parties to the criminal case in the County Court, submitted, or could submit, the criminal subject matter therein involved to the United States Court.

Nor is it maintainable that a court having civil jurisdiction over the person and property of the litigant can thereby exercise jurisdiction over the crimes committed by him in his dealings with the property before the acquirement of such civil jurisdiction. Therefore, the several injunctions inhibiting the criminal prosecution are beyond the jurisdictional power of the court.

It is well settled by the weight of reason and authority that an injunction will not lie to restrain criminal proceedings. In *ex parte Sawyer*, 124 U. S., 200, Mr. Justice Gray, with his

accustomed learning, research and discrimination, delivered so comprehensive an opinion upon this proposition as to render further discussion unnecessary. He says that:

1. "Under the Constitution and laws of the United States, the distinction between common law and equity, as existing in England at the time of the separation of the countries, has been maintained, although both jurisdictions are vested in the same courts."

2. "The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or pardon of crimes or misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the Executive and Administrative Department of the Government."

3. "From long before the Declaration of Independence it has been settled in England that a bill to stay criminal proceedings is not within the jurisdiction of the court of chancery, whether those proceedings are by indictment or by summary process."

4. "The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right."

5. "And in American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statutes of the State, or under municipal ordinances."

In re Sawyer, supra;
Suess v. *Noble*, 31 Fed. Rep., 885;
Helmsburg v. *Meyers*, 45 Ib., 283;
Davis v. *American Society*, 75 N. Y., 326.

It is, moreover, with confidence submitted that the cases of *Mayor of York* v. *Pilkinton*, 2 Adkins, 302; *Lord Montague* v. *Dudman*, 2 Vesey, 396; and *Attorney General* v. *Cleaver*, 18 Ib., 220, cited by the learned judge in his opinion, do not at all sustain the right of the lower court to issue these injunctions. In the first case mentioned, Lord Hardwicke tersely said that "This Court has not strictly and originally any restraining power over criminal prosecutions." And again, in 2 Vesey, *supra*, he said: "This Court has no jurisdiction to grant an injunction to stay proceedings on a *mandamus*; nor to an indictment; nor to an information; nor to a writ of prohibition that I know of." A comparison, too, of the first case and this case, evolves the distinction that separates them as far apart as the poles. In *Mayor of York* v. *Pilkinton*, the plaintiff and defendant both claimed the right of fishery in the river Ouse, and bills and cross-bills were brought to establish their several rights. Before the disposition of these equity proceedings, however, the plaintiff indicted the defendant for a breach of the peace. The indictment alleged merely fishing in said river, *without any actual breach of the peace*, which the Mayor of York claimed was a trespass. Here, then, there was not even a constructive breach of the peace if the defendant had the right of fishery, which right was to be determined in the equity proceedings. That is to say, the *same right* was being litigated in both forums at the same time. I beg to accentuate the fact that the Chancellor states that there was "no actual breach of the peace." The suggestion, therefore, is that if there had been an actual breach of the peace or a public crime committed, there would have been no restraining order.

In the case in 2 Vesey, a *mandamus* was sued out to compel Lord Montague to hold a court and admit defendants as ten-

ants. The bill of his Lordship prayed for an injunction to stay the proceedings on a *mandamus*. A demurrer to this bill was sustained by Lord Hardwicke. The Chancellor asked: "How can I grant an injunction to a writ of *mandamus* at common law?" His ruling for the plaintiff in *Mayor of York* v. *Pilkington*, *supra*, was cited as authority. But his Lordship replied: "This court has no jurisdiction to grant an injunction to stay proceedings on a *mandamus*; nor to an indictment, nor to an information. As to *Mayor of York* v. *Pilkinton*, the court granted an order to stay proceedings because the question of right was depending in the court, in order to determine the right, and therefore it was reasonable they should not proceed by action or indictment until it was determined. Here, as there, it came in incidentally."

In the remaining case of *Attorney General* v. *Clearer*, *supra*, an information was filed to restrain the defendants from operating a soap factory. An indictment had also been found against the defendant, but the injunction was refused.

2. From these citations it is apparent that no Federal court under the circumstances found in this record has jurisdiction to grant an injunction to any other Federal court restraining the prosecution of a crime; and *a fortiori* is such power wanting in the Federal court to restrain a State from the prosecution of crimes against her own laws.

The judicial power granted by the Constitution does not cover this case or controversy. The Constitution creating this government of limited powers bounded those powers, and beyond those bounds it is not lawful to pass. I commend to this court the language of Mr Justice Field in his concurring opinion in *Virginia* v. *Rives*, 100 U. S., 324, 336. He holds that the judicial power under the Constitution

> "does not include in its enumeration controversies between a State and its own citizens. There can be no ground, therefore, for the assumption by a Federal court of jurisdiction of offenses against the laws of a State. The judicial power granted by the Constitution does not cover any such case or controversy."

> He further says: "The second objection of the Commonwealth to the legality of the removal is equally conclusive. The prosecution is for the crime of murder, committed within her limits, by persons and at a place subject to her jurisdiction. The offense charged is against her authority and laws, and she alone has the right to inquire into its commission, and to punish the offender. Murder is not an offense against the United States, except when committed on an American vessel on the high seas, or in some port or haven without the jurisdiction of the State, or in the District of Columbia, or in the Territories, or at other places where the national government has exclusive jurisdiction. The offense within the limits of a State, except where jurisdiction has been ceded to the United States, is as much beyond the jurisdiction of these courts as though it had been committed on another continent. The prosecution of the offense in such a case does not, therefore, arise under the Constitution and the laws of the United States; and the act of Congress which attempts to give the Federal courts jurisdiction of it is, to my mind, a clear infraction of the Constitution. That instrument defines and limits the judicial power of the United States."

Virginia v. *Rives*, *supra*, 336.

Indeed, unless this reasoning be sound and the adjudication authoritative, our dual scheme of government is at an end, and the power of a State to enforce police regulations and to suppress crime is likewise at an end.

> The general government and the States, although both exist within the same jurisdictional limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres.

Collector v. *Day*, 11 Wal., 113.

3. And in order that this essential construction of our sys-

tem of government should be free from the changing judgments of man, the statute of March 2, 1793, was enacted.

> "The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." Sec. 720, U. S. R. S.

It is an interesting historic fact that this legislative limitation of March, 1793, was passed at the same session of Congress that the Eleventh Amendment was proposed, and that both were intended to secure to the States unquestioned exemption from Federal interference. The exception respecting bankruptcy was afterwards made.

This statute has been construed in a long line of decisions, and no where has it found the interpretation placed upon it by the trial Judge.

> "Section seven hundred and twenty means that the United States Court shall not in any manner stay proceedings in a State Court. The term proceedings includes all steps taken by a State Court, under its process from beginning to end, until final process of execution."

United States v. *Collier*, 6 Blatch., 362.

The trial Judge, however, endeavors to remove the application of the above section by invoking section 716, U. S. R. S., as giving power to the United States Court to issue all orders necessary to the exercise of its jurisdiction. He cites numerous authorities to sustain this view, as appears from his opinion. *R.* 40. The learned Judge, however, begs the whole question, for the contention is not that the court did not have the right to issue all orders essential to the exercise of its jurisdictional power, but that there is no authority to issue orders for the exercise of a power clearly beyond its jurisdiction.

It is needless to review the authorities of the learned Judge respecting the construction of section 716. These are all covered by the general statement that an examination of them will disclose that the injunctions therein were granted to parties who were endeavoring to enforce in the State Courts judgments or decrees theretofore declared void by the United States Court; and the injunctions were, therefore, manifestly ancillary proceedings in maintainence of original Federal authority.

The following quotation from the case of *Deitzch* v. *Huidekoper*, 103 U. S., 494, cited by the eminent Judge, is clearly against his construction and in favor of the contention here made:

> "The suit upon the bond was therefore but an attempt to enforce a pretended judgment of the State Court rendered in a cause over which it had no jurisdiction, but which had been transferred to and decided by the United States Circuit Court. The bill in this case was therefore ancillary to the replevin suit and was in substance a proceeding in the Federal Court to enforce its own judgment. A court of the United States is not prevented from enforcing its own judgment by the statute which forbids it to grant an injunction to stay proceedings in a State Court."

So that these injunctions here complained of are not only against the law of the land as settled by the weight and reason of authority, but against the explicit inhibition of the statute itself, and they are, therefore, upon every consideration of authority, statute and constitutional limitation, beyond the jurisdictional power of the Federal Court.

It is also apparent that the *habeas corpus* rested upon, and found its alleged warrant in, the injunctive decrees. Indeed, the *habeas corpus* was ancilliary to the injunctions, and gave to them their destructive vitality. But the *habeas corpus* itself is without jurisdiction, and the injunction is equally without jurisdiction; so we have a nullity avouched to sustain a nullity—a non-jurisdictional act grounded upon a prior non-jurisdictional and unconstitutional act.

4. Nor can it be contended that the scope of this writ is too narrow to inquire into the jurisdictional power of the court in granting the injunctions.

> *Habeas corpus* has been issued by the Supreme Court to inquire into the validity of an order of a Circuit Court of the United States, committing a party for refusing to answer interrogatories, which it was alleged were propounded to him in violation of the Federal Constitution.
>
> *Ex parte Fisk*, 113 U. S., 713.
>
> Also to inquire into the validity of an order of a Circuit Court in *mandamus* proceedings for refusing to obey which the party was committed for contempt, it being alleged that the order of commitment exceeded the jurisdiction of the court.
>
> *Ex parte Howland*, 104 U. S., 604.
>
> And to inquire into the validity of an injunction or restraining order, issued by a Circuit Court to prevent the eviction of an office holder, the defendants having disobeyed the order and been imprisoned therefor.
>
> *Ex parte Sawyer*, *supra*, 200.
>
> And to inquire into the validity of injunctions, issued by the United States Circuit Court, restraining the Attorney-General of Virginia and the Commonwealth's Attorneys of her several counties from instituting certain suits respecting the collection of the State revenue, the defendants having disobeyed the injunctions and been imprisoned therefor.
>
> *Ex parte Ayers*, 123 U. S., 443.

This authority perfectly sustains the compass of this writ of *habeas corpus* to inquire into the constitutional validity of the restraining order involved in this appeal. And it is worthy of

notice that in *ex parte Ayers*, *supra*, the writ was allowed to inquire into the validity of decrees enjoining the Attorney-General and Commonwealth's Attorneys from instituting suits for recovery of taxes, upon the ground that the State statute authorizing said suits was repugnant to the Federal Constitution. Here, however, there is no pretense that the statute covering the indictment against Wadley was at all repugnant to the Constitution.

Therefore, it is submitted that the writ, both in practice and upon authority, is copious in its scope to present upon this appeal the validity of these injunctions.

IV.

My contention heretofore has been that the first assignment of error, together with the petition, the order allowing the appeal and the pleadings, make the record affirmatively show that the question of jurisdiction was sufficiently certified to meet the requirements of the Evarts Act; and that the remaining four assignments of error are really a part and explanitory of the first.

These four latter assignments substantially explain the question of jurisdiction specifically contained in the first assignment, in this, that the question of jurisdiction was that the court had no *constitutional* authority for the exercise of the power complained of. Therefore, if this court be of the opinion that the question of jurisdiction is insufficiently certified, or that the four last assignments of error can not be treated as a part of the first, then the said four assignments *ex necessitate* present a "case which involves the construction or application of the Constitution of the United States."

The constitutional question is this, that the injunctions against the two several Commonwealth's Attorneys of Wythe county and the judge thereof (they being the only authorities competent to conduct this prosecution for the State) restraining them, and thereby the State, in the prosecution of this

felony, is really a suit against the State itself, in contravention of the eleventh amendment of the Constitution of the United States.

The early expression of this court that the State is not a defendant unless a *party to the record*, has long since been modified, and it is now the settled law of this court that "whether a State is the actual party defendant in a suit within the meaning of the 11th amendment of the Constitution of the United States, is to be determined by a consideration of the nature of the case as presented by the whole record, and not in any case by a reference to the nominal party on the record. That amendment must be held to cover not only States by name, but those against its officers, agents and representatives, while the State, though not named, is the real party against which the relief is asked and the judgment will operate."

In re Ayers, 123 U. S., 443.

In *In re Ayers* the Attorney General and Commonwealth's Attorneys were enjoined from instituting certain suits for the recovery of taxes due the State. The grounds of the bill were that the statutes, under which said suit was brought, were repugnant to the Constitution of the United States, and therefore the suit seeking to restrain said officers was not against the State, but against the officers themselves. These officers, upon refusing to obey the injunctions, were committed for contempt therefor. The court there held that, though the statutes were unconstitutional, the act of the State's officers was the act of the State, and a suit against them was in violation of the eleventh amendment.

If this be not a suit against the State, against whom is it? Have the Commonwealth's Attorneys and County Judge any personal interest whatever in the litigation? Are they not purely the representatives of the State? And is there any way known to the wit of man by which the State could be enjoined in this prosecution other than by restraining these very officers themselves?

"How else can the State be forbidden by judicial process to bring actions in its name except by constraining the conduct of its officers, its attorneys and its agents? And if such officers, attorneys and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subjected to the jurisdiction of the court as an actual and real defendant?

"It is, therefore, within the prohibition of the 11th Amendment to the Constitution. By the terms of that provision it is a case to which the judicial power of the United States does not extend. The Circuit Court was without jurisdiction to entertain it. All the proceedings in the exercise of the jurisdiction which it assumed are null and void. The orders forbidding the petitioners to bring suits, for bringing which they were adjudged in contempt of its authority, it had no power to make. The orders adjudging them in contempt were equally void, and their imprisonment was without authority of law. It is, therefore, ordered that the petitioners be discharged."

In Re Ayers, supra.

Mr. Justice Matthews, in this case, so thoroughly discusses the whole question as to render other citations useless.

It is proper to accentuate again that in the case last cited the court decided it was without jurisdiction, because the exercise of jurisdiction complained of was within the inhibition of the Eleventh Amendment. Therefore, in the case at bar the action of the court is void for the same reason. The Circuit Court was without jurisdiction, because the Eleventh Amendment forbade its doing what it did do. There could be, in this case, no jurisdictional question without the constitutional question; and there could be no constitutional question without the jurisdictional question; for they are so interwoven as to be inseparable. Therefore, the constitutional question involves the

jurisdictional question. In the case of *McComb* v. *Board of Liquidation*, 92 U. S., 531, this court distinctly considered the jurisdictional question involved as arising from the fact that the suit was against State officers.

The State of Virginia, aggrieved at this violation of her rights and this obstruction of the administration of her laws, appeals to this court for remedial justice.

A. J. MONTAGUE,
Attorney-General of Virginia
and *ex officio* Counsel for Appellant.